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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,418	07/09/2003	Craig P. Nadel	NN001USU	1280

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EXAMINER

CHAMBERS, TROY

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,418	NADEL, CRAIG P.	
	Examiner	Art Unit	
	Troy Chambers	3641	NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 16-20 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-15, 21 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 4-7, 16-20, 23 and 24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 08/12/2004.
2. Applicant's election with traverse of claims 1-3, 8-15, 21 and 25 in the reply filed on 08/12/2004 is acknowledged. The traversal is on the ground(s) that there is a strong policy to retain all embodiments of an invention in a single patent. This is not found persuasive because such a policy does not overcome the rules of restriction provided for in the MPEP, namely, that independent and distinct invention are subject to restriction.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the examiner on form PTO-892 has cited the references, they have not been considered.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the trigger and the flash bulb being coupled with the trigger must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the operable connection between the switch and the valve as described in the specification. Any structural detail that is essential for a proper understanding of the

disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The disclosure is objected to because of the following informalities: the applicant has not provided antecedent basis in the specification for "means for generating an audiovisual stimulus comprising a flash bulb".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 21 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, these two claims require a trigger that is operable to simultaneously activate the launching means and audiovisual means. However, the specification (pg. 12, line 24 to pg. 13, line 4) describes a *switch* that performs these functions simultaneously. Applicant's specification also describes a *trigger* but its operability is limited to *detecting* the activation of the propelling mechanism and *sending a signal* to the audiovisual mechanism. The specification does not disclose to one of ordinary skill in the art just how and in what manner the trigger is capable of performing both functions.

10. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 11 recites, "wherein the shape of projectile is chosen from the group consisting of darts, arrows, rockets, planes and

missiles. However, these terms describe specific elements, not any particular definable shape. For example, there are hundreds of rockets known, each with various features resulting in an equal number of shapes. Also, this particular language makes it unclear whether the applicant is claiming the particular shape or the object itself.

11. Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 13 recites, "a means for producing at least one light". The Examiner interprets "light" to refer to the electromagnetic radiation produced by a source rather than the source itself. As a result, it is not understood how one can produce more than one light. Even if there were many light sources, the end result would simply be light. This is similar to reciting, "means for producing at least one water". Even if there were several faucets running at the same time, the end result would be water, not two waters or three waters.

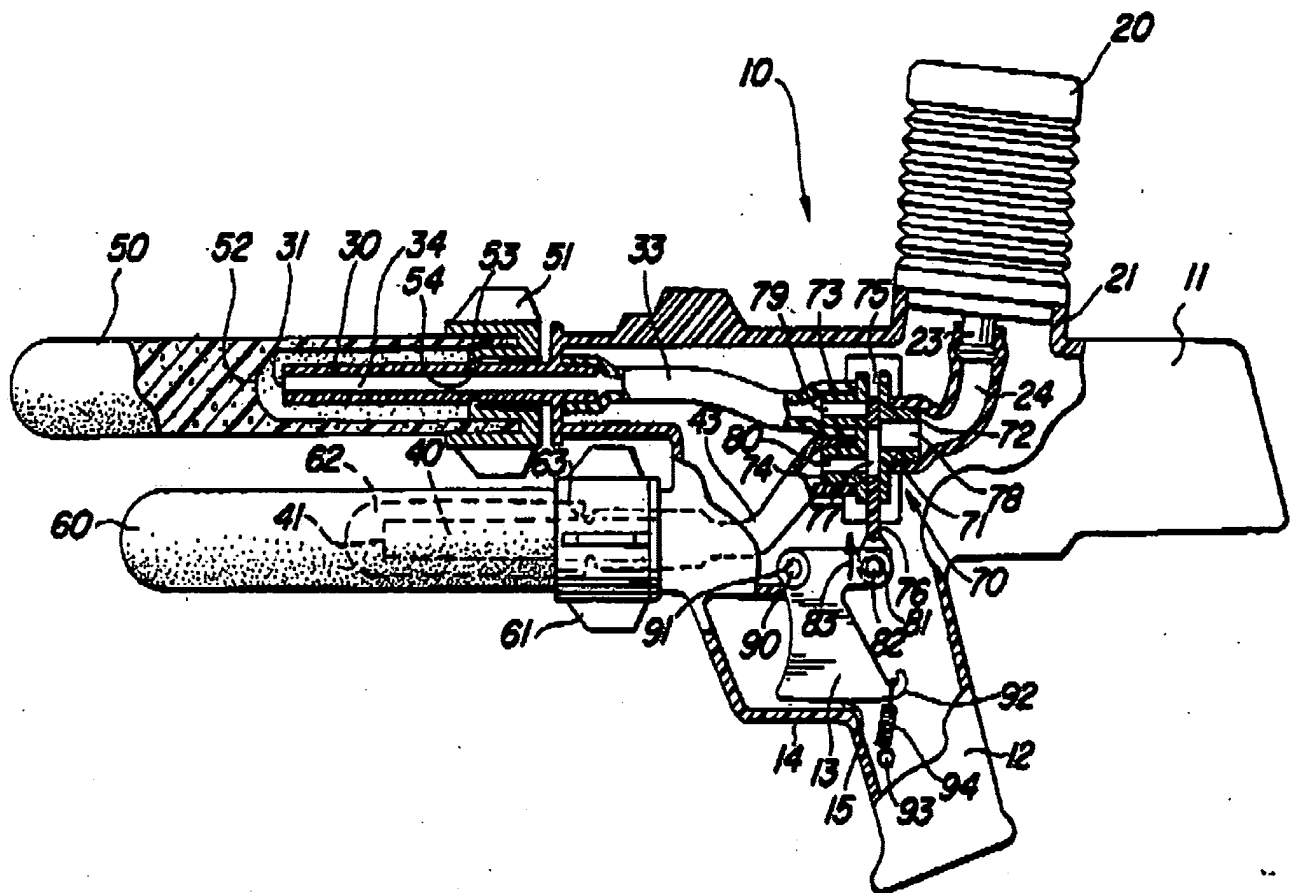
12. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the connection between the transparent flash light tube for enhancing and focusing the light of the flash bulb.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-3, 10-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5343850 issued to Steer in view of U.S. 2844710 issued to Zinsser. Steer discloses a projectile launcher as disclosed below.



With respect to claim 1, Steer discloses:

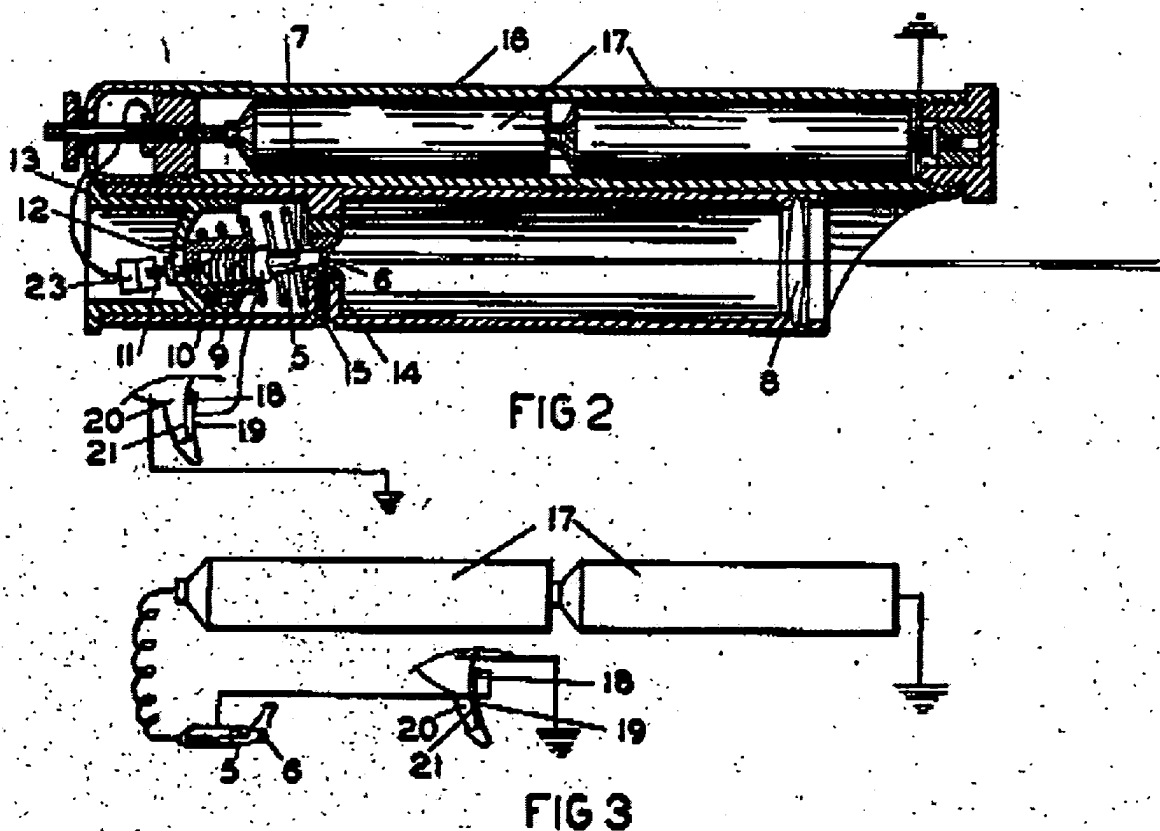
A projectile launcher	10
Elongated barrel	30, 40
Forcibly launching means (defined in claims 2 and 3)	20, 70

The pressurized air bellows 20 operates in response to a pulling of the trigger and is thus "hand operated". Although claim 1 recites the term "audiovisual", applicant has elected a species covering only a visual stimulus. Hence, with respect to the

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prosecution of the presently elected claims, “audiovisual” refers to the audio component of the device only.

However, Steer does not disclose the means for generating an audiovisual stimulus at about the same time as the launch of at least one projectile. Zinsser discloses such a means including a trigger-actuated (col. 2, ll. 33-43) light bulb 5 connected to batteries 17.



At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the projectile launcher 5 with the trigger-actuated audiovisual stimulus of

Zinsser. The suggestion/motivation for doing so would have been to mark the spot at which the launcher would be directed.

15. With respect to claims 2 and 3, refer to the rejection of the forcibly launching means of claim 1.

16. With respect to claim 10, Steer discloses a projectile 50 comprising a rocket.

17. With respect to claim 11, refer to claims 1 and 3, wherein the barrel 30, 40 appears to conform to the shape of the inside of the projectile.

18. With respect to claim 12, Steer discloses a soft foam projectile 50 (col. 5, ll. 52-54).

19. With respect to claims 13 and 14, refer to the rejection of the means for generating an audiovisual stimulus of claim 1.

20. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steer and Zinsser as applied to claims 1, 13 and 14 above, and further in view of U.S. Patent No. 5229531 issued to Song. Steer discloses a launcher as described above. Zinsser discloses audiovisual means including a flashlight tube 3. However, the flashlight tube 3 is not transparent. Song discloses a transparent housing (col. 2, ll. 29-38). At the time of the invention, one of ordinary skill in the art would have found it obvious to make the flashlight tube 3 of Steer transparent. The suggestion/motivation for doing so would have been to allow the user to view the contents located therein.

21. With respect to claim 21, both Zinsser discloses a trigger for activating both the firearm and the audiovisual stimulus as described in the rejection of claim 1.

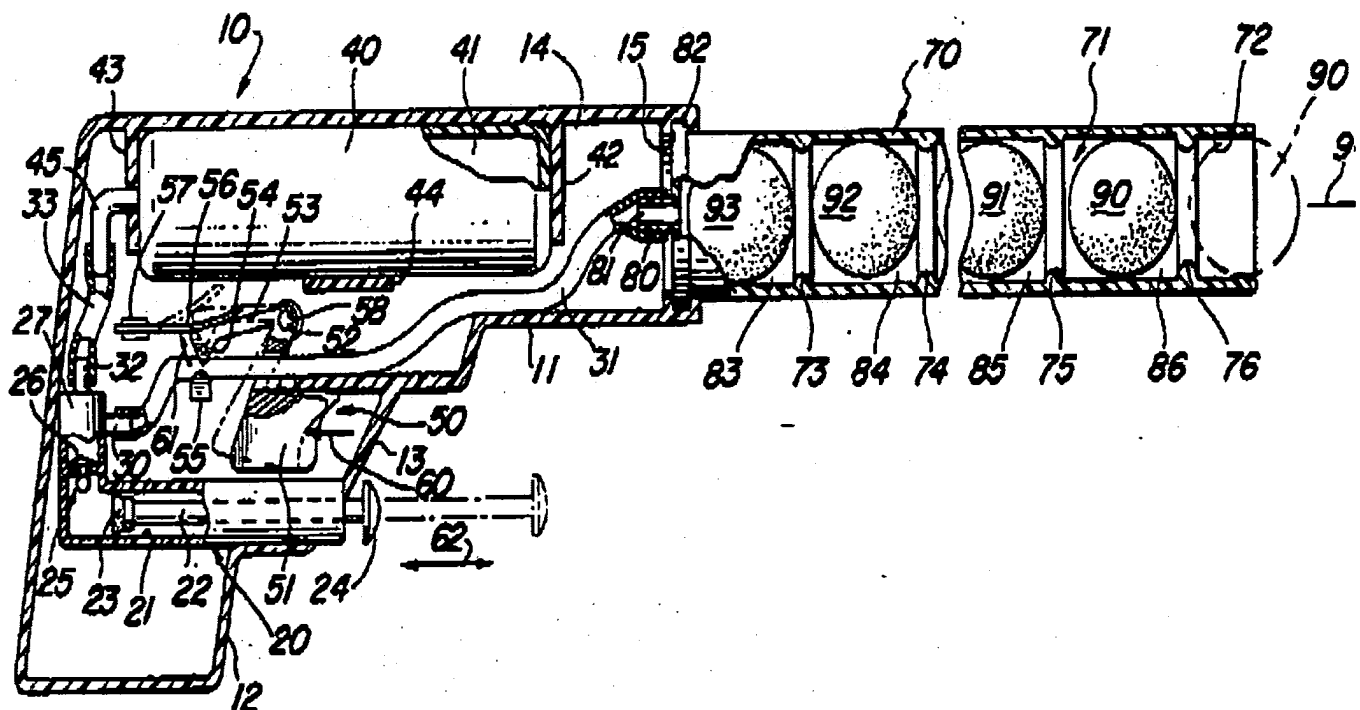
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22. Claim 1-3, 8-15, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5343849 issued to Steer in view of Zinsser.

Steer discloses:

With respect to claim 1, Steer discloses:

A projectile launcher	10
Elongated barrel	70
Forcibly launching means (defined in claims 2 and 3)	20, 25



23. However, Steer does not disclose the means for generating an audiovisual stimulus at about the same time as the launch of at least one projectile. Zinsser discloses such a means including a trigger-actuated (col. 2, ll. 33-43) light bulb 5 connected to batteries 17.

At the time of the invention, one of ordinary skill in the art would have found it obvious to provide the projectile launcher 5 with the trigger-actuated audiovisual stimulus of Zinsser. The suggestion/motivation for doing so would have been to mark the spot at which the launcher would be directed.

24. With respect to claims 2 and 3, refer to the rejection of the forcibly launching means of claim 1.

25. With respect to claim 8, Steer discloses a spherical projectile 90-93.

26. With respect to claim 9, refer to Fig. 1 of Steer.

27. With respect to claim 10, a missile is defined as "an object (as a weapon) thrown or projected usually so as to strike something at a distance." Hence, the projectiles 90-93 qualify as missiles.

28. With respect to claim 11, refer to Fig. 1 of Steer.

29. With respect to claim 12, refer to Steer, col. 4, line 39.

30. With respect to claims 13 and 14, refer to the rejection of the means for generating an audiovisual stimulus of claim 1.

31. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steer and Zinsser as applied to claims 1, 13 and 14 above, and further in view of U.S. Patent No. 5229531 issued to Song. Steer discloses a launcher as described above. Zinsser discloses audiovisual means including a flashlight tube 3. However, the flashlight tube 3 is not transparent. Song discloses a transparent housing (col. 2, ll. 29-38). At the time of the invention, one of ordinary skill in the art would have found it obvious to make

the flashlight tube 3 of Steer transparent. The suggestion/motivation for doing so would have been to allow the user to view the contents located therein.

32. With respect to claim 21, both Zinsser discloses a trigger for activating both the firearm and the audiovisual stimulus as described in the rejection of claim 1.

33. With respect to claim 25, Steer discloses:

A projectile launcher	10
A projectile	90-93
Elongated cylindrical barrel	70
Forcibly launching means (defined in claims 2 and 3)	20, 24, 40, 53, 54, 56.

The pressure release valve 53, 54 is connected to an activation switch comprising a trigger 51. Steer does not disclose the means for generating an audiovisual stimulus. However, Zinsser discloses such a device as described above. It would have been obvious to combine both Steer and Zinsser to arrive at the claimed device for the reasons stated above.

Conclusion

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on form PTO-892 are cited as of interest to show similar projectile launchers.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (703) 308-

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5870. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (703) 306-4198.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

A handwritten signature in black ink, appearing to be "Phil", written in a cursive style.